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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
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| 09/693,145      | 10/20/00    | GRESS                | E 814-081-2-1       |

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EXAMINER

ESHETE, Z

ART UNIT PAPER NUMBER

3711

3

DATE MAILED: 01/30/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

## Office Action Summary

Application No.

09/693,145

Applicant(s)

GRESS, EDMUND A.

Examiner

Zelalem Eshete

Art Unit

3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

### Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 18) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**  
**FIRST ACTION ON THE MERITS**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1, 2, and 4 – 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Lott.

Regarding claim 1: Lott discloses a game apparatus that simulates sport games comprising (see Figure 2 and 3):

- (a) A plurality of playing cards,
- (b) Cards representing a typical sports figure
- (c) Cards having indicia thereon depicting various information about the sports figure.

Regarding claim 2: Lott discloses that cards include an image of a specific sports figure (see Figure 2).

Regarding claims 4 – 6: Lott discloses that cards include information of ratings related to the game in question (see column 2, lines 14 to 26).

The functional recitation of the playing cards, such as specific game of wrestling and comparing the cards for winning, have not given patentable weight in defining the game article in question. The only difference between the printed matter of claimed invention and Lott resides in means and information conveyed by the printed matter and such differences are unpatentable [Ex Parte Breslov (192 USPQ) 431]

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1 – 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lott.

Regarding claim 1: Lott discloses a game apparatus that simulates sport games comprising (see Figure 2 and 3):

- (a) A plurality of playing cards,
- (b) Cards representing a typical sports figure, and
- (c) Cards having indicia thereon depicting various information about the sports figure.

Lott lacks specifying the game for playing wrestling.

However, Lott claimed a collectable sports card board game that is not limited to a specific sports game (see column 3, line 24 to column 4, line 38). He discloses a

general game apparatus by claiming an apparatus that is suitable to a representation of a sports player engaged in the playing of a particular playing position.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to apply the teaching of Lott to a variety of game plays, including wrestling for playing a more diverse game.

Regarding claims 9, 12, 19 and 20: Lott discloses a method of playing comprising the steps:

- (a) Providing a plurality of playing cards,
- (b) Selecting a card from the matrix display on the board (see Figure 1 and abstract)
- (c) Comparing information on the selected cards to determine a winner of the game (see abstract),
- (d) The player with the highest point value (rating value and money value) declared the winner (see column 3, lines 15 to 21).

Lott lacks specifying (a) a card selection from the stack, and (b) a winner solely based on the rating value.

However, Lott teaches selecting a card from a matrix display by using a chance means. He also discloses the concept of adding the rating value of the cards assigned to all the positions of the game in question to decide the winner. Moreover, he added the use of game board and play money to increase the complexity of the game.

Therefore, the actual form of card placement, in stack or matrix, has not been given patentable weight, because it has no critical importance in how the game is

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played as long as each card is selected in random fashion. It would also would have been obvious to one having ordinary skill in the art at the time the invention was made to apply part of Lott's game system by using only cards and ratings represented by the cards in order to play a simpler game.

Regarding claims 2 and 10: Lott discloses that cards include an image of a specific sports figure (see Figure 2).

Regarding claims 4 – 6, 13, 14 and 16: Lott discloses that cards include information of ratings related to the game in question (see column 2, lines 14 to 26).

Regarding claims 3, 7, 8, 11, 17 and 18: Lott discloses that cards include information of ratings related to a sports game of interest. Ranking and statistics of the specific sports figure are equivalent to ratings of the specific sports figure.

Regarding claim 15: Lott discloses the claimed inventions as discussed above except that it lacks the teaching of subtracting the ratings of punishment.

However, the concept of punishment (negative effect) is common knowledge in the game of sports. For example, in the game of football penalty of a given number of yards (negative yards) is given for a number of reasons.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify and apply Lott's teaching in any sports game by incorporating a positive and negative ratings for playing a more realistic sports game. In addition, it also would have been obvious to one having ordinary skill in the art at the time the invention was made to compare the total results whereby the total is the

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addition of positive ratings and subtraction of negative ratings as is well known in the art.

### ***Conclusion***


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gallegos and Castro teach the use of sports card for a game play.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zelalem Eshete whose telephone number is (703) 605 1235. The examiner can normally be reached on 8:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeanette Chapman can be reached on (703) 308 1310. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308 7768 for regular communications and (703) 305 3579 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308 1148.

Z  
January 23, 2001

  
JEANETTE CHAPMAN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700